

clear, and the failure to keep a proper look-out, are themselves indicative of criminal negligence, and are the logical consequences of the accused's previous state of mind.

The accused elected to give no evidence, and his counsel was unable to offer any suggestion as to how the accident occurred, if, as he alleged, the car was being driven at a moderate speed and on its proper side of the road. The road was 49 feet across, the deceased was not running across and the accused's brakes were in good order. On the defence theory the accident could never have happened.

I see no reason, therefore, to question the learned's Magistrate's findings which appear to be consistent with the probabilities. I might add that I do not accept counsel's suggestion that the spot of blood nearest the centre of the road, but well over to the left, is the identical spot where the deceased was struck. According to Hodgins the deceased was thrown some distance by the impact of the collision. His head struck the top of the bonnet and the blood came from his mouth. There must have been some interval of time before any blood could fall. The medical evidence, therefore, is consistent with the evidence of Hodgins that the impact took place when the accused's car was over the crown of the road on the wrong side. This evidence also leads to the conclusion that the car travelled considerably more than 20 feet before it was stopped. I do not wish to question the learned Magistrate's finding that the speed of the car was not excessive, except to remark that such finding was very favourable to the accused. There was ample evidence from which the learned Magistrate might reasonably have found that the speed of the car was excessive in the particular circumstances prevailing.

The degree of criminal negligence necessary to a conviction under section 304 A was fully appreciated by the learned Magistrate. I see no reason for differing from his conclusions.

The appeal will, therefore, be dismissed.

Solicitors for Appellant—R. C. H. Lim & Co.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

REX v. ONG PENG HOCK.

November 7, 1940.

[SINGAPORE MAGISTRATE'S APPEAL No. 61 of 1940]

*Common Gaming Houses Ordinance s. 4 (a)—
Occupier of stalls in which illegal games are played.*

The respondent was a director of a company operating an amusement park. The company sublet stalls and the stall-holders allowed illegal games to take place.

Held, that the accused was not the occupier of the stalls which the company sublet and that the whole area of the amusement park did not become a common gaming house because a game of darts was illegally carried on in one of the stalls.

MAGISTRATE'S APPEAL.

E. N. Griffith - Jones (Crown Counsel) for the Crown.

A. J. Braga for accused (respondent).

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—The accused was charged under s. 4(a) of the Common Gaming Houses Ordinance with using the New World Amusement Park as a common gaming house. There was an alternative charge under s. 4(b) with permitting the place to be so used. On each of these counts the accused was charged as the occupier of the New World Amusement Park.

There was a second alternative charge under s. 4(c) that the accused assisted in the management of a common gaming house.

Although the word "occupier" is not mentioned in the charge under s. 4(c), the prosecution did not attempt to prove that the accused actually took any part in the management of a stall where a ring-throwing game was in progress. The prosecution relied on the presumption arising under s. 14 of the Ordinance, and such presumption only arises against "an occupier". It was accordingly an essential part of the prosecution case in all the charges that the accused was the occupier, and they sought to establish that he was the occupier by showing that a company of which he was a director was the lessee of the amusement park, and that the Municipal licences and the licence under the Theatres Ordinance were in his name. It is true that exhibit "C", the counterfoil of the licence of the 28th February 1940, states it to be for the "Ghost Train and Side Shows" at the New World, but I cannot see that a stall at the New World can possibly come under any of the definitions of a theatrical performance. Possibly, the Ghost Train falls under one or other of the definitions, but the stalls certainly do not. In my opinion, therefore, a stall does not require a licence under the Theatres Ordinance.

Nor can it be alleged that the accused is the occupier of every stall which his company sublets, and I cannot find that the prosecution alleged that the whole area of the New World was a common gaming house because a game of darts was being illegally carried on in one of the stalls. The prosecution no doubt hesitated to put forward a contention which would give rise to the presumption under s. 6 sub-s. 2 of the Common Gaming Houses Ordinance. If the New World were a common gaming house every single visitor however innocent, would be presumed to have been playing therein until the contrary was proved, and be liable to a fine of \$25.00.

The learned Magistrate seems to have held that the accused was not the occupier of the stall in question and accordingly acquitted him of the charges under s. 4(a) and 4(c), but proceeded with the charge under s. 4(b). The charge under s. 4(b) was however never amended so as to charge the accused as "owner" and not "occupier" and the accused was for this reason entitled to an acquittal on this charge also. In the absence of any amendment it was not permissible to argue on the appeal that the accused might be liable as owner. It is true that certain portions of the written judgment appear to indicate that the learned Magistrate was considering the case as if an amendment had in fact been made. As however that was not the case, his observations must be treated as irrelevant. It is certainly not competent for an appellate Court to convict an accused person on a charge different to that upon which he has been tried and acquitted. The powers of the Court in a case of an acquittal are given by s. 310(a) of the Criminal Procedure Code. The power to alter the finding given by s. 310(b) (ii) only applies when the appeal is against a conviction. It would clearly be an injustice to an accused person to convict him on a charge which he has not been called upon to meet.

The record of acquittal on all the charges preferred will therefore be confirmed, but the appeal will be allowed to the extent that I direct the accused to be retried as owner under s. 4(b) of the Ordinance.

Order for retrial.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

December 5, 1940.

LATIP BIN AHMAD & ORS. v. REX.

[SINGAPORE MAGISTRATE'S APPEAL]

No. 117 of 1940]

Penal Code ss. 146, 147 and 148—Criminal Procedure Code ss. 168 and 178.

A person charged with a major offence under the Penal Code may be convicted of a minor offence of the same character without being specifically charged therewith. It is not necessary that an alteration in the charge should be read out and explained to the accused.

Five persons were originally charged with rioting and two were acquitted. The remaining three were convicted of rioting. They did not themselves constitute an unlawful assembly within the meaning of s. 146 of the Penal Code and contended that they could not be convicted of rioting.

Held, that as there was ample evidence that the disturbance was created by a number of persons far in excess of five the fact that only three had been sufficiently identified did not prevent those three from being convicted of an offence under s. 147.

MAGISTRATE'S APPEAL.

First accused in person.

A. J. Braga for second accused.

E. M. Tampoe Phillips for third accused.

E. N. Griffith-Jones (Crown Counsel) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—Two points of law were urged on behalf of the appellants.

As regards No. 1 accused, it was submitted that he was charged under s. 148 of the Penal Code (rioting armed with a deadly weapon), but was convicted under s. 147 (simple rioting). Mr. Braga relied on s. 168 of the Criminal Procedure Code which provides that any alteration in the charge should be read and explained to the accused. But it is clear that under s. 178 an accused person may be convicted of a minor offence of the same character without being charged. A person charged with murder may be convicted of culpable homicide not amounting to murder, or of voluntarily causing grievous hurt, without being specifically charged. There is accordingly no substance in this objection.

As regards all three accused, it was submitted that, as of the five persons originally charged two had been acquitted, the remaining three did not constitute an "unlawful assembly" within the meaning of s. 146 of the Penal Code, and could not accordingly be convicted of rioting. This would be a valid argument if the three appellants were the only people who took part in the disturbance. There was, however, ample evidence that the complainants were attacked by a number of people far in excess of five, and the fact that only three have been sufficiently identified does not prevent these three from being convicted of an offence under s. 147.